THE HONOURABLE SRI JUSTICE V.ESWARAIAH

Date: 5-09-2007

WRIT PETITION No. 15355 OF 2007

BETWEEN:

M/s.Siva Priya Bar & Restaurant,
a proprietory concern at 11-31-469/1&4,
Palnadu Bus Stand Area, Narsaraopeta,
Guntur District, rep.by its Proprietor
Sanikommu Koti Reddy.

…Petitioner

And

Commissioner of Prohibition & Excise, Hyderabad and others.

…Respondents

ORDER:

Heard the learned counsel appearing for the petitioner, learned Government Pleader for Prohibition and Excise and the learned counsel appearing for the 4th respondent.

2. The petitioner is the licensee in Form 2-B to run the Bar and Restaurant in premises bearing No.11-31-469/1&4, Palnadu Bus Stand Area, Narsaraopet, Guntur District, vide Licence No.10/2006-07 for the period commencing from 1-7-2006 and ended with 30-6-2007. The said licence has been renewed by order dated 29-6-2007 by the third respondent for the excise year 2007-08 i.e., from 1-7-2007 to 30-6-2008 as per the provisions of the Andhra Pradesh Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules 2005 (hereinafter called "the Bar Rules").

It is stated that the 4th respondent is the licensee in form 2-B for running Bar and Restaurant in premises bearing No.14-1-33, Lal Bahadur Market Centre, Narsaraopet, Guntur District for the year 2006-07 and he filed an application dated 17-5-2007 before the Commissioner of Prohibition & Excise, Hyderabad, seeking permission to shift the licenced premises

to door No.11-31-469/2, Palnadu Bus Stand Area, Narsaraopet town, stating that there was a division of property of the premises where the 4th respondent is running the said Bar and Restaurant at door No.14-1-33, Lalbahadur Market Centre, Narsaraopet and that the portion of the ownership that fell to his owner does not meet the requirement of the plinth area and therefore, he sought for shifting of the licenced premises. Under law, the Commissioner of Prohibition and Excise alone is empowered to order shifting, but not the Superintendent of Prohibitin and Excise.

It is stated that thereafter another representation has been filed stating that the premises to which the 4th respondent desire to shift the premises in his earlier application was wrongly mentioned as 11-31-469 instead of 11-31-468 and accordingly, the first respondent by his order dated 11-7-2007 accepted the shifting of premises, rectifying the door number. The petitioner does not have the copy of the order, whereby the Commissioner of Prohibition and Excise accepted the shifting of the premises, except the order dated 11-7-2007 rectifying the door number.

It is the case of the petitioner that the reasons stated by the 4th respondent about the division of the property among the owners is not correct and there is only one owner in respect of the premises bearing door No.14-1-33, Lalbahadur Market

Centre, Narsaraopet, where the licence has been granted in favour of the 4th respondent. Therefore, on the incorrect representation about the division of the property and without there being any division of the property by the competent Court of law, cannot constitute a ground for shifting of the premises. The writ petitioner is the abutting neighbour and if the licenced premises of the 4th respondent is shifted, the business of the petitioner will be adversely effected and therefore, he has locus standi to question the said action and more so, the shifting has been made contrary to the rules.

It is further stated that under the Bar Rules, the Bar and Restaurant licence can be granted to run the business of sale of Indian Made Foreign Liquor and Foreign Liquor and the licence may be granted in the establishment functioning in municipalities and with a belt area of 2 Kms., of the periphery of such municipalities, municipal corporations and within a belt area of 5 Kms., of the periphery of such Municipal Corporations and in tourism centers (except places of religious tourism) as notified by the Department of Tourism of the State Government or Central Government.

It is stated that there are restrictions for the grant of licence and one of the restriction is: the premises shall have the minimum plinth area of 100 sq. meters, a separate bar room, sanitary equipment like wash basin, water closet, facility for

cooking and serving, complete meals of good quality to the consumers, air conditioning, air cooling facility etc., and subject to the fulfillment of the terms and conditions of the licence.

It is stated that Rule 13 (3) of Bar Rules provides for shifting; according to which, no shifting of the licensed premises shall ordinarily be permitted during the licence period from one location to another. However, shifting of the licencesed premises under form 2-B may be considered by the Commissioner of Prohibition and Excise. There is a prohibition for the shifting of the shop and in extraordinary circumstances only, shifting shall be permitted, but in the instant case, for incorrect reasons furnished about the partition of the premises, shifting was permitted. Therefore, it is stated that the action of the respondents in permitting the shifting of licenced premises is illegal, arbitrary and contrary to the rules.

3. The 4th respondent filed a counter, stating that the competent authority i.e., the Commissioner of Prohibition and Excise has only permitted for shifting of licenced premises from door No.14-1-33, Lalbahadur Market Centre, Narsaraopet to Door No.11-31-468, Palnadu Road, Narsaraopet as per rules and no legal right of the petitioner has been violated and therefore, the writ petition is liable to be dismissed. The 4th respondent never made any application to the Prohibition and Excise Superintendent and therefore, the alleged application

relied on by the petitioner enclosed along with the writ petition is fabricated, forged and cooked up and it might be created by the petitioner himself for obtaining exparte interim orders and therefore, the petitioner is liable to be prosecuted for filing all false documents during the course of judicial proceedings.

It is stated that the 4th respondent made an application dated 17-5-2007 to the Commissioner of Prohibition and Excise, who is competent authority to accord permission to shift the licenced premises and the said application has been considered after conducting due enquiry and accorded permission by order dated 11-6-2007 permitting to shift the Bar from Door No.14-1-33, Lalbahadur Market to Door No.11-31-469/2 of Narsaraopet town and thereafter as there was a mistake in mentioning the door No. 11-31-469/2 instead of door No.11-31-468, the said application dated 6-07-2007 to correct the door number was also considered and the mistake was rectified permitting him to shift the licenced premises to door No. 11-31-468. The petitioner suppressing the true and correct facts, fabricated and forged the documents to obtain the exparte interim order. Under Bar Rules, there is no restriction of the distance.

It is stated that the Excise authorities inspected the premises to which the Bar is to be shifted at premises No.11-31-468 and as there was a mistake in mentioning the correct

door number, the mistake was rectified. The 4th respondent never made any application about the division of the property or the change of property, but the petitioner cooked up a story created by himself relying on the forged and fabricated documents and succeeded in obtaining the interim order.

4. I have perused the records and also the counter filed on behalf of the respondents 1 to 3. The un-disputed facts are that form 2-B licence is granted in favour of the petitiner at door No.11-31-469/1&4, Palnadu Bus Stand Area, Narsaraopet, whereas the 4th respondent was granted licence at door No.14-1-33, Lalbahadur Market Centre, Narsaraopet for the Excise year 2006-07. During the licence period 2006-07, the 4th respondent filed an application dated 17-5-2007 before the Commissioner of Prohibition and Excise, Hyderabad seeking shifting of his Bar and Restaurant from door No.14-1-33 to Door No.11-31-469/2, Palnadu Bus Stand Area, Narsaraopet on the ground that he is sustaining losses and therefore he intended to shift the licenced premises. Along with the said application, the 4th respondent filed 'No Objection Certificate' issued by the local authority, rental agreement, licence copy, blue prints of the proposed premises and also paid necessary fee for shifting the Bar. The reason given for shifting in the said representation is that he sustained losses due to lack of potential for running the Bar and Restaurant in the original licenced premises and as the

necessary documents such as No Objection Certificate, Rental Deed have been filed, the Commissioner of Prohibition and Excise called for the remarks from the Deputy Commissioner of Prohibition and Excise, Guntur, who in turn conducted enquiry and sent proposals vide his proceedings in Rc.No.129/2007/B1, dated 2-6-2007 after personal inspection of the proposed premises and recommended for shifting of premises. The Commissioner of Prohibition and Excise after considering the recommendations of the Deputy Commissioner of Prohibition and Excise, Gutur District, passed orders dated 11-6-2007 in Cr.No.5200/CPE/2007/M2 permitting the 4th respondent for shifting the premises from door No.14-1-33, Lalbahadur Market Centre, Narsaraopet to door No.11-31-469/2, Palnadu Bus Stand Area, Narsaraopet town, subject to the condition that the proposed premises satisfy Rule 6 of the Bar Rules and the Trade Licence to run the Bar and Restaurant by the Narsaraopet local authorites. Since there was a mistake in respect of door number of the proposed premises, the 4th respondent filed an application dated 6-7-2007 before the Commissioner, Prohibition and Excise, Hyderabad stating that by mistake, he stated the premises No.11-31-469/2 instead of door No.11-31-468 to the premises to which the licenced premises is to be shifted and accordingly requested to rectify his mistake, permitting him to shift the Bar and Restaurant to

door No.11-31-468. He has already paid the fee of Rs.10,000/- for permitting to shift the premises on 25-6-2007. The said application has been considered and after calling the remarks from the Deputy Commissioner of Prohibition and Excise, Guntur, the Commissioner of Prohibition and Excise, Hyderabad by order dated 11-7-2007 accepted to establish the Bar and Restaurant of the 4th respondent at Door No.11-31-468, Palnadu Bus Stand Area, Narsaraopet.

5. The record goes to show that shifting has not been permitted on the alleged letter said to have been filed by the 4th respondent before the Prohibition and Excise, Superitendent about the division of the property, but the said shifting has been permitted only on the application of the 4th respondent dated 17-5-2007 filed before the Commissioner, wherein it was stated that he is sustaining losses in the said premises and therefore, he wants to shift the Bar. It is not in dispute that shifting has been permitted on the recommendation of the Deputy Commissioner, Prohibition and Excise, Guntur only and the reason for shifting as stated by the 4th respondent in his application is, the losses in his business.

Therefore, the only question that arises for consideration as to whether the action of the respondents permitting the shifting of licenced premises from door No.14-1-33, Lalbahadur Market Centre, Narsaraopet to 11-31-468, Palnadu Bus

Stand Area, Narsaraopet is legal and valid.

6. The Andhra Pradesh Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2005 have been framed by the Governor of Andhra Pradesh in exercise of the powers conferred under Section 72 read with Sections 17, 28 and 29 of the Andhra Pradesh Excise Act, 1968 and Ordinance No.5 of 2005.

As per Rule3(1)(b) of the said Rules, “Bar” means the privilege granted under the Excise Act to an establishment where food is served, for sale of Indian Made Foreign Liquor and Foreign Liquor, in loose for consumption on the licenced premises.

As per Rule 3(i) Licence means licence granted under the Bar Rules. The licence period means the period of 12 months beginning from the 1st July of the year ending with 30th June of the succeeding year or part thereof.

As per Rule 4: A licence in form 2-B may be granted to an establishment licensed by the local authority to serve food such as a Hotel or a Restaurant, for the sale of Indian Made Foreign Liquor and foreign liquor in glasses or pegs for consumption within the licenced premises but not for sale of Indian Made Foreign Liquor and foreign liquor for removing it out of the licenced premises. Such licence may be granted in establishment functioning in municipalities and within a belt area of 2 kms of the periphery of such municipalities, municipal corporations and within a belt area of 5 kms., of the periphery of such municipal corporations and in Tourism Centers (except places of religious tourism) as notified by the Department of Tourism of the State Government or Central Government.

As per Rule 5; the person intending to establish a Bar may submit an application in Form-1A to the Commissioner

enclosing a challan of Rs.1,000/- to get prior clearance. After prior clearance, in Form 2A, the holder of the prior clearance shall apply for the concerned Prohibition and Excise Superintendent for the grant of licence for Bar in Form 1B accompanied by a challan of Rs.10,000/-. Thereupon, the Prohibition and Excise Superintendent after making such enquiry as he made, may think necessary to ascertain the bonafides of the applicant and verifying the particulars furnished in the application and examine the suitability of the premises for granting Bar and forward the same to the Deputy Commissioner of Prohibition and Excise of the concerned Division along with his report.

Under Rule 5(6), the Deputy Commissioner, after causing such enquiry as he may deem fit may grant the licence.

Therefore, the licencing authority in respect of a Bar under Rule 5(6) of the Bar Rules is the Deputy Commissioner of Prohibition and Excise, but Rule 11 and Form 2B goes to show that the licence is being issued by the Prohibition and Excise Supreintendent alone, though the granting authority is the Deputy Commissioner of Prohibition and Excise.

Rule 6 deals with restrictions on the grant of licence; such as minimum plinth area, sanitary equipment, facility for cooking and serving complete meals of good quality to the consumers, Air conditioning and Air cooling facilities, adequate vehicle parking and distance rule of 100 meters from educational institutions, places for public worship such as temples, mosques, churches and hospitals. And 500 meters of predominantly residential area, within 50 meters of a Highway, prohibiting the grant of licence and production of No Objection Certificate from the local authority, rental deed from the owner

etc.

Rule: 7 provides that any person below the age of 21 years, an insolvent and persons suffering from leprosy or other contagious disease and defaulters in payment of excise revenue are not entitled for grant of licence.

Rule 13 deals with sale of liquor in licenced premises, which is extracted as follows:-

"(13) Sale permitted at the licensed premises only:-

(1) The licensee shall sell the liquor only at the premises specified in the licence.

(2) (a) No change or alteration of the licensed premises shall be made during the licence period without the prior approval of the Deputy Commissioner.

(b) Extention of the licenced premises by adding contiguous enclosures to the existing permitted enclosures for consumption may be permitted for valid reasons by the Deputy Commissioner subject to payment of an extension fee of Rs.10,000/-.

(c) Extention of the licensed premises by adding separate enclosures having no contiguity with the existing permitted enclosures may be permitted for valid reasons by the Deputy Commissioner subject to payment of additional licence fee @ 10% of licence fee for each such separate enclosure and on payment of extension fee of Rs.10,000/-.

(3) No shifting of the licensed premises shall ordinarily be permitted during the licence period from one location to another. However, the shifting of the licenced premises under Form 2-B may be considered by the Commissioner subject to payment of Rs.10,000/- as shifting fee, if the shifting of the original licenced premises of Hotel and Restaurant is permitted by the local authority".

7. The perusal of Rule 13 goes to show that the Deputy Commissioner of Prohibition and Excise is the competent

authority to change or alter the licenced premises during the licence period and also permitted extension of the licenced premises. In so far as the shifting is concerned, the Commissioner of Prohibition and Excise is the competent authority to permit such shifting. The rule does not specify recording any reasons, but only says that ordinarily shifting of the licenced premises shall not be permitted. However, the Commissioner of Prohibition and Excise is competent to consider such shifting on payment of Rs.10,000/-. Merely because the word “ordinarily” is mentioned under Rule13(3) of the Rules, it cannot be said that reasons to be recorded for permitting such shifting. However, the applicant has shown the reason to permit him for shifting of the licenced premises, stating that he is sustaining losses in the existing premises and therefore, he would like to shift the said premises. The premises to which the 4th respondent is proposed to shift is not situated within the prohibited distance mentioned in rule 6. Along with the application for shifting, the 4th respondent also submitted No Objection Certificate obtained from the local authority. In fact, the said application has been forwarded for necessary enquiry and report to the licencing authority i.e., Deputy Commissioner of Prohibition and Excise, Guntur and the licencing authority vide his report dated 2-6-2007 after personal inspection of the proposed premises, recommended

for shifting the premises. The perusal of the proceedings of the Deputy Commissioner of Prohibition and Excise, Guntur dated 2-6-2007 goes to show that he has specifically recommended the shifting of the premises and therefore, it cannot be said that there is no any reason for shifting of the said premises and that the Commissioner of Prohibition and Excise permitted shifting on mere asking without any reason.

8. The 4th respondent was granted licence for the period from 1-7-2006 to 30-6-2007 and at the end of the year 2006-07 only, permission for shifting has been granted. As per the scheme of rules, the number of licences for grant of Bar and Restaurant in Form 2B have not been restricted. In the absence of any specific rule limiting the number of Bar licences, the petitioner cannot object the grant of a fresh licence. If that be so, even if the 4th respondent is not permitted to shift to the said premises bearing door No.11-31-468, Palnadu Bus Stand Area, Narsaraopet, some other person also is entitled to take a Bar and Restaurant licence in Form 2B at Door No. 11-31-468 for the Excise Year 2006-07 or 2007-08 commencing from 1-7-2007 to 30-6-2008. Licence period has been divided into four quarters consisting of three months of each quarter. If the licence is granted after completion of two quarters, licence fee has to be paid for six months i.e., for the last two quarters. There is no restriction for grant of licence

even in the middle of the Excise Year and at any time. Therefore, it cannot be said that the petitioner has got any legal right to raise any objection for shifting of the licenced premises as ordered by the Excise authorities on the application of the 4th respondent.

For the aforesaid reasons, I do not see any merits in any of the contentions raised by the learned counsel appearing for the petitioner and the writ petition is devoid of merits.

Accordingly, the writ petition is dismissed. No order as to costs.

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V.ESWARAIAH, J

Date: 05-09-2007.

Note:

L.R.Copy to be marked.

B/o

Shr.